IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21231 of 2007
To
SPECIAL CIVIL APPLICATION No. 21232 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESHBHAI NARANBHAI BHAYANI & 1 - Petitioner(s)
Versus
THE DEPUTY COLLECTOR & 2 - Respondent(s)

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Appearance :
MRS KETTY A MEHTA for Petitioner(s) : 1 - 2.
None for Respondent(s) : 1, 3,
MS.NISHA PARIKH AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 21/08/2007

ORAL JUDGMENT

1. RULE. Learned A.G.P. Ms.Nisha Parikh waives service for the respondents. By consent and at the request of the learned counsel, the petition was heard for final disposal.

2. The relevant facts in brief are that the petitioners have purchased the property consisting of land in the year 1999 and, while the instrument of transfer was sought to be registered, it was referred for proper assessment of market value and stamp duty laviable thereon. Notices were issued, but not served in accordance with the relevant Rules and the first impugned order dated 10.03.2005 came to be passed, wherein, under the provisions of Section 32-A of the Bombay Stamp Act, 1958 (for short, “the Act”), market value of the property in question came to be assessed at Rs.70,47,300/- on which deficit stamp duty and penalty totaling to Rs.6,83,480/- was assessed and demanded by the notice dated 07.08.2007 which was issued under Section 200 of the Land Revenue Code. Upon the aforesaid order coming to the notice of the petitioner, they are stated to have approached for a reference and necessary applications for reducing the requisite deposit and to condone the delay in making the application for reference were also made. However, the reference as envisaged in the provisions of Section 32-B was not made and the applications of the petitioner came to be dismissed by the impugned order dated 07.08.2007 only on the ground of delay. Therefore, being aggrieved by the aforesaid

orders, the petitioner has approached this Court with an oral statement of the learned counsel that the petitioners were still prepared to comply with the necessary conditions and make appropriate representation before the Chief Controlling Revenue Authority for the purpose of proper assessment of market value and stamp duty.

3. Learned A.G.P. Ms.Nisha Parikh, appearing for the respondents, fairly conceded that, in view of the irregular and delayed proceedings held by the Collector concerned and in view of several recent judgments of this Court, the applications of the petitioner for reference and for reduction of the amount of requisite deposit were required to be considered and decided on merits and the authority shall have no objection to consider and decide the same in accordance with law after affording to the petitioner an opportunity of being heard.

4. Therefore, by consent, the petition is partly allowed with the direction that the application of the petitioner for reducing the amount of deposit for making reference and under the provisions of Section 32-B of the Act shall be considered and decided on merits, after affording to the petitioner an opportunity of being heard, within a period of one month from

the date of receipt of a copy of writ of this order. Thereafter, the petitioner shall deposit requisite amount in accordance with the order of the authority within a period of one month. And if such deposit is made, the Collector concerned shall draw up a statement of the case of the petitioner and refer it to the Chief Controlling Revenue Authority in accordance with the provisions of Section 32-B of the Act. Thereafter, the case of the petitioner along with the so-called stamp duty appeal presented by the petitioner shall be considered on merits and decided in accordance with law, after affording to the petitioner an opportunity of being heard. It is clarified that the reference and the so-called appeal of the petitioner shall not be dismissed only on the ground of delay. In view of long lapse of time, the aforesaid proceedings shall be conducted and concluded as expeditiously as practicable. Subject to the petitioner complying with the aforesaid directions, impugned order dated 07.08.2007 and the notices for coercive recovery by attachment or auction are hereby quashed. Rule is made absolute accordingly with no order as to costs.

(D.H.WAGHELA, J.)

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